

CRAWFORD (J. B.)

AN ESSAY
ON
MALPRACTICE;

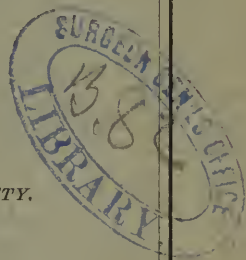
READ BY APPOINTMENT
Before the Luzerne County Medical Society, at Wilkes-Barre,
JANUARY 8TH, 1879,

BY JOHN B. CRAWFORD, M. D.,
OF WILKES-BARRE, PA.

PUBLISHED BY REQUEST OF THE SOCIETY.

1879.

ROBT. BAUR, BOOK AND JOB PRINTER, BOOK BINDER AND STATIONER,
104 SOUTH MAIN ST.



C. H. Crane
Assistant Surgeon General U.S.A.
With the compliments of
The Author -
AN ESSAY

ON

MALPRACTICE;

READ BY APPOINTMENT

BEFORE THE LUZERNE COUNTY MEDICAL SOCIETY, AT WILKES-BARRE,

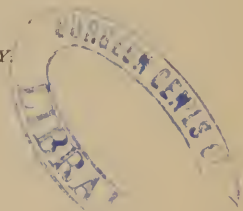
JANUARY 8TH, 1879,

✓
BY JOHN B. CRAWFORD, M. D.,
OF WILKES-BARRE, PA.

PUBLISHED BY REQUEST OF THE SOCIETY.

1879.

ROBT. BAUR, BOOK AND JOB PRINTER, BOOK BINDER AND STATIONER,
104 SOUTH MAIN ST.



MALPRACTICE;

BY

JOHN B. CRAWFORD, M. D.

THE necessities of civilized society require that a few of its members shall perform its more abstruse and difficult duties—perhaps I might say its higher duties; that they shall prepare themselves by a special course of mental training, and by diligent study and research, to promote the mental, the moral, and the physical well-being of their fellow-men; that they shall so discipline their minds and inform their understandings as to enable them to bring into requisition all the available appliances of reason, of justice, and of science, to promote morality, to maintain order, to administer justice, to relieve suffering, and to prolong life.

To adequately perform these duties requires mental and moral endowments of a high order. The sordid and the selfish man will find but little in the performance of these duties that will befit his nature; for benevolence and generosity should be an unfailing attribute of a member of a learned profession. The sluggard and the dolt will find it a field requiring too much effort to suit the slothful nature of him who seeks a life of ease and comfort. The trickster and the knave can find no pleasure in the duties of a vocation which calls into play all that in the mind of man is noble, generous, and just. And yet the fact is but too obvious, that all of these characters often undertake the performance of the duties pertaining to a learned profession; and the results of their misdirected

efforts have given origin to that unpleasant word that designates the subject that I am required to elucidate to-day, to wit: *Malpractice*.

With the improper performance of clerical duties we, as physicians, have nothing to do, and of it I shall have nothing to say. The improper conduct of members of the legal profession may, and often does, seriously concern us, but I shall leave the consideration of that subject mainly to my colleague,* who, to the accomplishments of the physician, has added a profound knowledge of the law; and to him, mainly, I leave the duty of exposing and of reprobating the sins of his favorite profession.

Medical malpractice may be classified under three forms: First—Ethical malpractice, in which the rules which have been established for the regulation of professional intercourse and professional conduct have been violated. Second—Civil malpractice, in which the duties pertaining to the healing art have been inadequately or improperly performed; and, Third—Criminal malpractice, in which medical knowledge and skill have been perverted to the purposes of crime.

The code of ethics of the American Medical Association declares it to be "Derogatory to the dignity of the profession to resort to public advertisements or private cards or handbills, inviting the attention of persons afflicted with particular diseases; publicly offering advice and medicine to the poor, gratis; or promising radical cures; or publishing cases or operations in the daily prints, or to suffer such publications to be made; or to invite laymen to be present at operations; or to boast of cures or remedies; to adduce certificates of skill and success, or to perform any other similar acts. These are the ordinary practices of empirics, and are highly reprehensible in a regular physician. Equally derogatory to professional character is it for any physician to hold a patent for any surgical instrument or medicine, or to dis-

*Dr. Harry Hakes.

pense a secret nostrum, whether it be the composition or exclusive property of himself or others; for if such nostrum be of real efficacy, any concealment regarding it is inconsistent with professional liberality, and if mystery alone gives it value and importance, such craft implies either disgraceful ignorance or fraudulent avarice. It is also reprehensible for physicians to give certificates attesting the efficacy of patent or secret nostrums, or in any way to promote the use of them."

By the same code, physicians are bound to exercise a scrupulous regard for the rights and the reputations of other physicians, and general rules are established for the regulation of professional intercourse among members of the profession. To violate these rules, constitutes ethical malpractice. In those States where every practitioner of medicine is required to be a member of a county medical society, and where members may be deposed for infringement of these rules, and thus deprived of the right to practice, it sometimes becomes a matter of much legal importance. In our own State, however, it is otherwise. Our medical societies are only voluntary associations—without the shield or even the recognition of our laws. In fact, nothing pertaining to the practice of medicine is protected by the statutes of Pennsylvania, save quacks and quackery. It still, however, is of the utmost importance that these rules be scrupulously observed. If there are no legal penalties provided for their infringement, then the moral forces of the medical profession and of an enlightened society should be invoked in their support. As members of an honorable profession, let us ever maintain the highest standard for professional and personal conduct.

Whoever undertakes to perform the duties of a medical practitioner assumes responsibilities and obligations of the very highest importance. The interests intrusted to his care are nothing less than life and health, and the responsibility of whoever assumes the care of these is commensurate with the importance and the value of the objects

which he assumes to guard. The physician is expected to meet his fellow-being on the very threshold of his existence and to give him safe conduct into the world. He is required to watch over his infancy, and to protect him, so far as human agency can, against the numerous physical ills that beset his pathway in life. In youth, through mature age, in the decline, and to the end of life, the physician is entrusted with whatever pertains to the life and health and physical well-being of his fellow-man

To adequately prepare himself for the performance of duties so difficult and so important, necessitates a long course of special mental training. Years of patient, plodding, toil; a general acquaintance with the natural sciences; a long course of study and investigation in the hospital, in the laboratory, and in the dissecting-room are indispensable requisites in fitting any man for the performance of the duties of a physician. Some communities have been wise enough to require such a course of preparation on the part of every one who undertakes the practice of medicine, and thereby to protect themselves against the evils which necessarily result from ignorance and unskillfulness. But in our own State, as well as in some others, no efficient restraints are placed upon any one who may choose to practice medicine. The most ignorant, the most stupid, the most depraved man or woman may assume to exercise the functions of a medical practitioner, and yet receive the same recognition and the same protection in law as the most learned and worthy member of the profession. The gate is left wide open, and the ignorant and the learned are alike invited to enter. Both may undertake the duties pertaining to obstetrics, to medicine, and to surgery; and society undertakes to protect itself against the consequences of malpractice by holding each alike responsible for mistakes, for negligence, and for injurious consequences resulting from medical and surgical treatment. It is my purpose to show that this is wrong in principle and impolitic in practice.

I do not claim immunity for the medical practitioner from the consequence of his acts. The same principles of justice which regulate the responsibilities and the liabilities of individuals in other avocations may justly be applied to him. If he is negligent, if he wantonly injures those entrusted to his care, or if he undertakes to perform the delicate duties which pertain to his profession without due preparation therefor, if he fails to bring into requisition all available knowledge and skill, it is but just and right that he should be held accountable for the evil results of such a failure of duty. It would be but the plain dictate of wisdom to go even further than this, and to *prevent* the ignorant, the immoral, and the unfaithful from engaging in the practice of medicine. It has never been accounted the highest wisdom "to lock the stable *only* after the horse has been stolen"; and it would certainly afford society more effectual protection against the evils of malpractice if those persons who are most likely to commit it, or who are morally certain to commit it, were restrained by law from pursuing the practice of medicine, and thus effectually prevented from engaging in an occupation in which they can only blunder. Nothing is gained by the punishment of an offender, except as it may restrain him and others from the commission of crime. Nothing is gained by the punishment of an ignorant practitioner for the destruction of a life or the ruin of a limb, except so far as it may restrain him, or others of his kind, from a repetition of his acts. To prevent him altogether from undertaking to act in the capacity of a physician, would be to save from evil both him and his victims, and would often result in preserving to agriculture, or to some honest industry, the efforts and the abilities of many who now, without any fitting qualifications therefor, assume to act as practitioners of medicine and surgery.

Duties which are difficult to perform, and which require a higher grade of talent and learning for their accomplish-

ment, and which are attended with a greater moral and personal responsibility than ordinary labor, deserve to receive a higher compensation than the latter. Under our laws, the ignorant pretender to medical skill, who never spent a day nor a dollar in fitting himself for the work he undertakes, is entitled to the same compensation as the educated physician who has devoted years of time and labor, and has incurred onerous pecuniary expenses in procuring the knowledge that is necessary to fit him for the duties of his profession. This is manifestly unjust. It is unjust toward the educated physician, because it subjects him to unequal competition, and compels him to accept a smaller reward for his services than their value justifies or his necessities require. It is unjust toward the public, for it enables the medical pretender to levy upon his dupes the price of learning and skill that he does not possess. It is impolitic, for it destroys the strongest incentives to professional excellence ; for it cannot be expected that men will put forth their greatest efforts in this or any other department of life without being prompted by the ordinary motives which incite their energies. It is impolitic, because it substitutes falsehood for truth, ignorance for learning, pretense for skill, and inflicts injury when beneficence is required. It is impolitic, because it fosters deception and fraud, and thus tends to demoralize society; for there is no field to which the pretender so instinctively turns, and in which he can put forth his efforts with such advantage to himself and such injury to others, as in that of medicine; and while the law theoretically holds him responsible for the consequences of his acts, he practically enjoys almost complete immunity. It is seldom, indeed, that a prosecution is brought against a quack for civil malpractice; the pains and penalties which pertain to such actions are generally borne by the better class of physicians, and are often incurred where the highest intelligence, the greatest skill and the most beneficent motives have been exercised. Prosecutions of this kind

are usually brought against reputable and responsible members of the profession by paupers or charity patients, with whom such actions seem to be a favorite method of cancelling their obligations for medical and surgical attendance. I have known of many suits brought against respectable members of the medical profession, to recover damages for alleged malpractice, and have occasionally been threatened with such myself; but I can recall no instance among them all in which the service complained of was rendered with any expectation of fee or reward, or in which any compensation for such service had been received or tendered. They are usually instituted by ignorant, dishonest and ungrateful persons, incited and misled by some disreputable practitioner or cunning quack; and whose cupidity and avarice are stimulated by some equally disreputable member of the legal profession (for the profession of medicine has no monopoly of unworthy, unprincipled and incompetent members). It may usually be seen that representatives of each of these classes are the real promoters of this class of actions.

The medical quack, despised and detested by the profession to which he clings as a parasite, denied recognition by those whom he attempts to imitate, conscious of his own inferiority, and desirous of dragging others down to his own level, jealous of reputations which he cannot rival, yet cunning and crafty enough to make others dissatisfied with the results of labor which he could not himself perform, or would not dare to undertake, is ever ready to incite a feeling of dissatisfaction or distrust on the part of those who have been the subjects of medical or surgical treatment by better qualified and more skillful members of the profession. It is usually an easy matter for such a creature to convince the unfortunate recipient of some severe injury, whose crushed limbs have been saved from amputation by extraordinary effort and skill, or who has been rescued from impending death which threatened him in some of the many forms that disease assumes; that his

mangled limbs might have been made better, or that his impaired health might have been restored had *his* particular skill and wisdom only been put into requisition at the proper time. But he is usually just too late to do anything for the patient's relief, except to advise a suit for malpractice against the very person to whom the complaining party is indebted for the preservation of his limbs or his life. The manner in which this process is usually carried out, is a matter with which we are all familiar. Some lawyer adapted to the kind of work to be undertaken is sought for, and is not very often hard to find, for the contracting parties are "birds of a feather," and know each other by instinct. An arrangement is readily made. A suit for malpractice is instituted against the plaintiff's physician *on speculation*. The lawyer agrees to bring the suit and conduct the prosecution for a certain percentage of what he can extort from the defendant, and that is sure to be the lion's share. The quack—jackal-like—accepts for his portion anything that he can get for his efforts in the way of manufacturing testimony and the influence that he can exert in behalf of the prosecution. The poor devil of a plaintiff is to have the remainder, if there should be any; and thus arranged, a suit for civil malpractice is begun.

This, gentlemen, is no unfair nor exaggerated statement of the manner in which suits for civil malpractice are usually concocted. All such actions which have been brought against respectable physicians in this county, and which have been tried in this court house, have, so far as I have any knowledge of them, been conducted in the very manner I have described.*

And here let me remark, that, in common with my professional brethren, I highly appreciate and honor the vocation, the services, and the character of the legal pro-

* Hon. Edward L. Dana, formerly Judge of Luzerne County, who was present at the reading of this paper, stated that the description here given of the manner in which malpractice suits are instituted, is substantially correct.

fession. Their duties properly performed, call into exercise the highest faculties and the noblest instincts of man. The very name of lawyer, according to our traditional ideas, carries with it the conception of a cultured gentleman, of one courteous in manner, wise in council, just in deportment, and refined in speech. Such, I say, is the traditional character, well deserved, and long maintained by the members of the legal profession. But while I hold this high estimate of the *ideal* lawyer, and believe that it comports with the general character of the bar, I fear that modern times, and the exigencies of modern rascality, have lowered the standard of the legal profession, and brought upon it a just reproach. It is but too painfully obvious that a class of men have gained admittance to the practice of the law, who are destitute of the high character and high attainments which alone should give admittance to membership of the bar; men without culture, without character, with no appreciation of the amenities or the decencies of professional conduct; bringing with them into the arena of our courts, the manners of the schools from which they drew their chief attainments—the stable, the circus, the dog-pit, and the prize-ring—and emulous only of attaining proficiency and distinction in the vocabulary of billingsgate, and the tricks and dodges useful in the evasion and perversion of the law. The highest objects ever aimed at by such, are clients and fees—no matter who the client, nor what the cause. They are equally ready to defend the most atrocious criminal, or to pursue the most innocent defendant. Honesty, right, justice, or humanity have no place in their code of ethics. If there is anything in which they take especial delight, it is in the enforcement of an unjust claim, the acquittal of a hardened criminal, or the conviction of an innocent defendant. These are the creatures who are ever on the alert for cases of civil malpractice, and who follow us as the shark follows the emigrant ship, or the wolf the caravan; and the same predatory instincts actuates the one that impels the

other. It is a just reproach to the legal profession, and a stain upon modern jurisprudence, that such creatures are permitted to practice in our courts. But it may be replied, that the medical profession contains an equal, if not a greater, number of ignorant, unprincipled and unworthy members, and that complaints of this kind come with a bad grace from us. We must admit the fact, that the profession of medicine *is* disgraced by the existence of a large number of so-called "Doctors of Medicine," who are utterly incapable and unfit for the performance of the business which they undertake, and that the evils resulting therefrom cannot well be exaggerated, nor even adequately expressed. But we have long and perseveringly, though unsuccessfully, sought for power to correct this evil. We have claimed, and still claim, that none but physicians are capable of judging correctly of the qualifications of physicians, and of determining the fitness or the unfitness of those who seek to engage in the practice of medicine. Give to us the power and control over the membership of the medical profession that the bar associations can exercise in regard to the admittance to the practice of law, and we will emulate the work of Hercules in casting out from the ranks of our profession whatever is unworthy and unclean. Let it be remembered, that wherever there is an incompetent or an immoral practitioner of medicine or surgery, he is there in defiance and in despite of the protests of the organized medical profession. Give us the power to remedy this evil, and there will be no further cause for complaint.

I think it will be generally conceded that the law of our State, and the rulings of our courts, in relation to the responsibility of physicians in cases of civil malpractice, are, in the main, just and right. According to Justice Woodward, a practitioner of medicine or surgery is bound to treat his patient with reasonable diligence and skill. His contract with his patient does not imply an obligation to restore a fractured limb to its original length and sym-

etry, nor to guarantee its former usefulness. His implied contract is, to treat the case with "ordinary diligence and skill;" and "ordinary skill" is defined as such a degree of skill as is usually employed by thoroughly educated physicians and surgeons. He is not required to be a prodigy of medical skill or wisdom. He is simply required to be faithful and attentive to his patient, and to possess and to apply such a degree of knowledge and skill as is usually and generally possessed by members of his profession. If he fails to do this, he is liable in damages for the evil consequences to his patients resulting therefrom; and while the carpenter, the blacksmith, or the shoemaker may undertake the treatment of a fractured limb or the cure of a disease without incurring the slightest responsibility for the evil consequences of his ignorance, the physician is held to a strict accountability for the possession and exercise of a high order of wisdom and skill. This is unequal and unfair, although, so far as the physician alone is concerned, there is nothing in his responsibility to complain of. Anything less than this would fail to give adequate protection to the public. Anything more would be oppressive and unjust to the medical practitioner. It is not, therefore, the law, nor its interpretation by our courts, of which we complain, but rather of its perversion and abuse. In other words, the injustice done to physicians, in suits for civil malpractice, arises mainly from malpractice on the part of the members of the legal profession. I do not admit that every error of judgment, or every mistaken opinion, or the well-intended actions based upon them, should subject the physician to the penalties of malpractice. Human judgment is too fallible to justify such a requirement as that. If he possesses a thorough knowledge of the subjects pertaining to his profession, and a zealous and faithful application to such knowledge be made, a mistake or an error of judgment, under such circumstances, would, in equity, scarcely justify a suit for damages, especially if such services were gratuitously performed. Yet such, I

understand, is the law, that it makes no difference in regard to responsibility, how well qualified a practitioner of medicine or surgery may be, how sincere his purpose, nor how benevolent his intentions, unless it be to enhance his liability in case of the commission of an error or a mistake.

I apprehend that those attorneys who prosecute doctors with such avidity, would be very unwilling to have the law, as they interpret it, applied to themselves, or to their own professional performances. While they are eager to enforce the severest penalties upon medical men for every mistaken opinion, or mistaken action based thereon, they would be very unwilling to be mulcted in damages for every piece of mistaken or erroneous advice that they may give their clients. It would seem that in about every legal controversy, the attorneys on one side or the other (perhaps often on both), have given their clients incorrect or mistaken advice, in consequence of which the client suffers pecuniary loss. And it is just here that these gentlemen find it convenient to reverse the golden rule, and to do unto others as they would *not* that others should do unto them. They tell us that doctors dislike to take their own medicine. I think those attorneys would dislike, still worse, to take their own law.

And yet, harsh and burdensome as the application of the law frequently is, we, as physicians, do not complain of it. We are willing, we are desirous, that every safeguard shall be thrown around the practice of medicine, and that it shall be guarded by every security that wisdom can devise, even if individual cases of hardship and injustice to ourselves should necessarily result; we desire that every incentive for thorough preparation, and for faithful devotion to duty, should be placed before the members of our profession.

The injustice, then, from which physicians chiefly suffer, when they become the subjects of suits for civil malpractice, arises, mainly from incompetent testimony, from perverted evidence, from ignorant, prejudiced, or dishonest

jurors, and from the evil machinations of those unworthy limbs of the law that I have already described. I know it may be said that these are evils that are incident to every form of legal contest. This is to some extent true. But I believe that in no other class of cases do these evils stand out in such prominence, as in suits for damages against physicians and surgeons. There seems to be a belief prevalent among the stupid, ignorant creatures, who too often fill our jury-boxes, that physicians are endowed with the faculties and powers of gods; that they have control of all the forces of nature; and that health and disease, life and death, may, by a proper exercise of the forces at their command, be made to do their bidding, and that if they fail to rightly exercise this potent agency, they deserve the direst consequences of the law. These are the "exceedingly intelligent jurors" that our legal persecutors are so careful to select. As a case in point, take the last one (I hope it is the last one of its kind), tried in this court house—I mean the suit brought against Dr. Peter Winter, of Dunmore. I extract from one of our daily papers,* published the day after the trial of this case, the following account, which gives a fair and truthful statement of the case. The characters that I have described were all *dramatis personæ* in this case :

"A CASE OF MALPRACTICE.

"A case has just been tried before Judge Handley, in which the medical profession is deeply interested. The facts as developed on the trial of the case, are these : A man by the name of Green, living at Dunmore, was injured some time in September, 1871, by the falling of a portion of the roof of a mine in which he was working. He was attended by Dr. Peter Winter, of Dunmore, who treated the case without pay and without the hope of compensation. The Doctor continued in attendance upon the patient about two months, giving him all the care that his

* Scranton Republican, May 17, 1878.

condition required. The patient finally recovered, but is permanently lame. It was alleged by the plaintiff, that this lameness is the result of malpractice on the part of Dr. Winters, and this suit was brought to recover damages therefor. The plaintiff went upon the stand and detailed the circumstances attending the injury, and the treatment of his case by the defendant. The only medical evidence he produced was an affidavit made by Dr. George B. Seamans, State Senator, in which he stated that he had carefully examined the person of the plaintiff at no less than three different times; that he found a dislocation of the hip joint; that the head of the thigh bone was dislocated upwards, and that the leg was shortened, in consequence, two and one-half inches. He stated that the head of the thigh bone is now resting on the back of the pelvis, and that he could move it about in that location. He stated positively that there was no injury about the pelvis, except the dislocation of the hip joint; that the pelvis was not fractured nor the bones displaced, and that the nature of the injury could easily have been discovered by a physician soon after the reception of the injury.

“The defendant, in his testimony, stated that when he was called to attend the case, he found the left leg of the plaintiff broken—both bones below the knee being fractured—a severe and extensive wound in the lower part of the body and the bones of the pelvis broken. The hip was not dislocated. He then described in detail the treatment which he bestowed upon the case, such treatment as he believed to be necessary and proper. Drs. Squire, Pier, and Fisher, of Scranton, and Drs. Murphy, Davis, Cresler, and Crawford, of Wilkes-Barre, made an examination of the person of the plaintiff, by direction of the court, and were successively placed upon the stand and gave evidence in regard to the case. These witnesses all concurred in the positive declaration that no dislocation of the hip joint had taken place; that the head of the thigh bone is now in its proper socket, and that the plaintiff’s

injury consisted of a fracture of the bones of the pelvis, and that the lameness results from their unavoidable displacement. They stated that such injuries as the plaintiff had received are usually fatal.

“All these witnesses alleged that the treatment of the case, by Doctor Winter, had been eminently proper and successful, and that the result of the case had been far more favorable than could reasonably have been anticipated. Some of these witnesses had been called into court by the plaintiff. All of them are surgeons of ample experience and established character.

“After argument by counsel, and a fair and impartial charge by Judge Handley, the case was given to the ‘exceedingly intelligent’ jury, who, after a brief consultation, returned a verdict of two hundred and seventy-five dollars for plaintiff.

“Many members of the medical profession are surprised and indignant at the result of this case. They assert that, with such a precedent as this, it is exceedingly dangerous to practice surgery in this county, and they express their determination to attend no cases of accident at the mines, without first being divested of all responsibility for results, as well as receiving a payment of fees. The worst effects of such a verdict will fall, not upon the medical profession, but upon the poor and unfortunate victims of mining accidents, who will now find it very difficult to procure the aid of a surgeon. No one can greatly censure the doctors for the course they have determined to pursue. A large proportion of their work—and often their most disagreeable work—is bestowed, as in this case, upon those utterly unable to pay them the smallest pittance for services. If their charitable efforts are to be rewarded by prosecutions for malpractice, and verdicts of this kind, instead of fees, or even thanks, such a course on their part becomes the plainest dictate of common prudence.”

I have been informed from a source entitled to full credence, that one of the "exceedingly intelligent" and virtuous jurors who decided this case was zealously in favor of giving a verdict of five thousand dollars in favor of the plaintiff, and expressed a strong desire to inflict vindictive damages upon the defendant. This case, I apprehend, furnishes a fair sample of the gross injustice that is frequently done the unfortunate defendant in a suit for civil malpractice. Outrageously unjust, and contrary to evidence, as this verdict was, Dr. Winters hesitated to apply for a rehearing of the case, fearing that a more stupid and perverse jury, and still more outrageous verdict might thereby be encountered.

I have no remedy to propose for the evils that I have described. I merely call the attention of my professional brethren to them as dangers to be shunned—as rocks to be avoided. Their remedy, if remedy there be, rests with the legal profession, to whom alone we can look for reformation in matters like these.

Criminal malpractice is a field of which the medical quack holds an almost exclusive monopoly, and one in which his talents, his attainments and his morals shine with a peculiar and befitting luster. There are many ways in which the predatory propensities of this class of rascals may be exercised; but their favorite field is that of criminal abortion. The law sternly interdicts this revolting crime, and lays a heavy hand upon whoever may be convicted of committing it. But it is a crime easy to commit and difficult to prove, for its victims "tell no tales," and its subjects, being participants in the crime, usually endeavor to shield the cowardly fiend whose infamous vocation is the murder of unborn infants; and often, too, the murder of their unfortunate and fallen mothers. The medical profession has long since put the seal of its reprobation upon this worse than beastly practice, and has sought to bring upon its perpetrators the severe punishment that their deeds deserved. But this species of malpractice is still

carried on, all around us, and with astounding frequency, in defiance of law, of religion, and of morality. We have seen in this vicinity how nearly impossible it is to convict the perpetrator of this crime, and are compelled to witness, with increasing frequency, the ghastly footprints of the abortionist, but, equally impotent either to check his progress or to punish his transgression. If our law-makers really desire the suppression of this crime, they will provide greater facilities for the conviction of those guilty of its perpetration, and severer penalties for its punishment.

The reformations in law that we would urge in matters pertaining to malpractice, should be directed, not so much to its punishment as to its suppression. The penalties that punish honest error and unavoidable mistakes, are now severe enough to insure vigilance on the part of every competent practitioner of medicine and surgery. But, as was recently said by our learned president judge, "ignorant people require to be protected against themselves," against the consequences of their own ignorance, their own follies, and their own superstitions. They require to be protected against the wiles of those artful quacks and brazen-faced pretenders, who disguise the most profound ignorance behind the most pretentious assumptions of wisdom, of learning, and of professional standing. For, within a few days, we have seen, stripped and unmasked, and turned out to the public gaze in all his professional nakedness and deformity, a creature who has for years, announced himself in the public prints of the county as "a graduate of the Queen's College of Birmingham, and a member of the Royal College of Surgeons of England," and compelled to confess—by a cross-examination upon the witness stand—that his boasting advertisements were utterly false, and that he never attended a lecture nor received instruction of any kind in any legalized medical college; and yet, this ignorant, lying pretender has, for years, subsisted upon patronage thus gained, and which was due to the honest, qualified medical men, who were struggling

for subsistence, around him. Whatever evil has befallen his dupes, as the results of such a career, is justly chargeable to the laxity of our laws.

We desire to raise the standard of medical attainments to the highest possible point, and thus secure to society the most efficient medical service that the current state of human knowledge will allow. But in order to accomplish this, we must have the protection of the law, and the moral and material support of those in whose interest we labor. Without these aids, we cannot make satisfactory advancement. For when ignorance is able to grasp the rewards that are due to learning, and stupidity stalks forth unchallenged in the habiliments of wisdom; when benevolence and skill encounter penalties and persecution; and fraud wins the honors that are due to merit, it requires something more than ordinary human nature to impel the physician onward in the path of duty. In the contest for patronage, the quack possesses a decided advantage. He unhesitatingly resorts to means for winning public favor that are forbidden to the physician. All the means by which dishonest cunning can win public favor, are open to the pretender, who can deceive the ignorant, cajole the credulous, and pander to the vices of the depraved. There are no weapons at his command, with which the physician can successfully assail such an adversary. In the unequal contest, the honest practitioner can only appeal to the higher faculties and higher intelligence of his fellow-men, and submit to what he cannot avert, lament what he cannot control; and, emulating the spirit and paraphrasing the utterances of Him who wept over a degenerate city, say to a quack-ridden world, "*How often would I have gathered thee as a hen gathereth her brood, but ye would not.*"

